

Our Ref: 114/R20	<b>Cornwall Council</b>	FORM 1
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**FORM OF APPLICATION FOR MODIFICATION ORDER**

Wildlife and Countryside Act 1981

Definitive Map and Statement for the former District / Borough\* of Penwith / Kerrier / Carrick / Restormel / North Cornwall / Caradon\*

**To:** Cornwall Council

**Of :** New County Hall, Treyew Road, Truro TR1 3AY

**I/We**

**Of :**

hereby apply for an Order under section 53(2) of the Wildlife and Countryside Act 1981 modifying the definitive map and statement for the area by:

(a) Deleting the footpath / bridleway / restricted byway / byway open to all traffic

from: .....Grid Ref .....

to: .....Grid Ref .....

(b) **Adding** Restricted Byway

from: Byway 125 Gridref: SW36733438

to: Levant Road U6009 Gridref: SW36973407

(c) **Upgrading to** a Restricted Byway the Footpath

from:

to:

(d) Varying /adding to the particulars relating to the footpath/bridleway/restricted byway/byway open to all traffic.

from: .....Grid Ref .....

to: .....Grd Ref .....

by providing that historical evidence has been discovered to establish a public right of way.

I / We attach copies of the following documentary evidence (including statement of witnesses) in support of this application:

DOCUMENTARY EVIDENCE IS ATTACHED

.....  
.....  
.....

Signed

.....Dated: 4 January 2021.....

## **APPENDIX II - Evidence Sources**

### **OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1888 to 1913**

National Library of Scotland/Vision of Britain on-line maps.

### **Ordnance Survey Maps - 25 inch England and Wales, 1841-1952**

National Library of Scotland or old-maps.co.uk on-line maps.

### **OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913**

National Library of Scotland on-line maps.

### **Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961**

National Library of Scotland on-line maps.

### **Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924**

National Library of Scotland on-line maps.

### **Inland Revenue Valuation Records - Finance (1908-10) Act 1910**

Photographed at National Archive - British Horse Society.

### **Tithe Records**

Cornwall Record Office, CD copies.

### **Parish Area Books**

National Archive =-scanned Google/British Horse Society.

### **Definitive Map Records**

Cornwall Council / Records Office

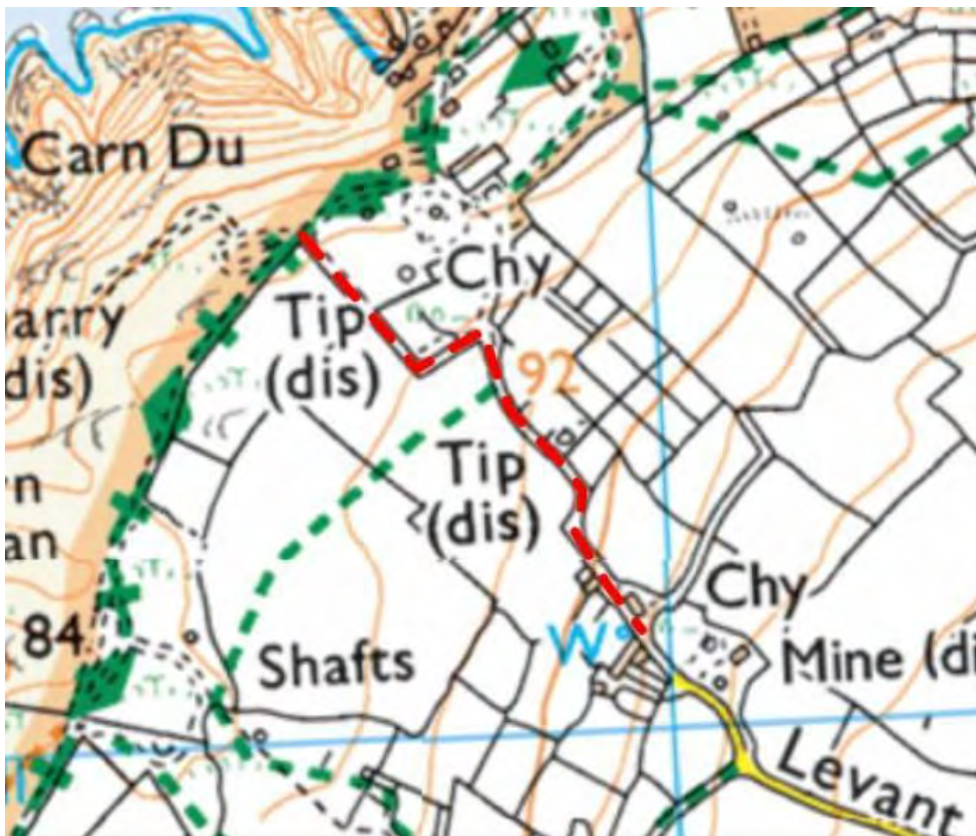
**Our Path Reference: 114/R20**

**Parish:** St Just-in-Penwith **Grid Reference:** SW369342

## Application Details

### Map of Path:

Route applied for is shown in RED DASHES



### Description of Path:

Path starts at Byway 125 SW36733438 and ends at Levant Road U6009 SW36973407

Tarmaced Road and unsealed hedged track

### Current Recorded Status:

Path is not recorded on the Definitive Map

Path is not recorded on the List of Streets.

**Status being applied for:** Restricted Byway

### Notes:

Path is not obstructed.

Path is walked, ridden and cycled.

**Our Path Reference: 114/R20 Grid Reference: SW369342**

Path starts at Byway 125 SW36733438 and ends at Levant Road U6009 SW36973407

## **Documentary Evidence**

### **Evidence from Maps:**

Old maps provide very good evidence of the history of roads and other paths. Whilst such maps themselves do not record any user rights, any routes must have been significant enough to be mapped and the maps were intended for use by the public. If old maps clearly show the way marked as a road or old lane it is very good supportive evidence of the way being a road.

#### **OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913**

Sheet 351 - 1896 - Levant Road is shown but not the starting section.

#### **Ordnance Survey Maps - 25 inch England and Wales, 1841-1952**

Cornwall LXVII.9 and 10 (St Just in Penwith) Surveyed: 1875 The first section of the path is partially shown. The majority that is the northern part of Levant Road is Plot 461 'Road'. together with the part of the road which is on the list of streets.

The 1908 Edition shows the whole route of the application, the first part being in a single plot together with what is now the coastal byway.

#### **OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913**

Cornwall LXVII.SW Published: 1908 - The whole of the route is shown as a road.

#### **Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961**

Sheet 10/33 - 1951 Path is clearly shown as a road.

#### **Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924**

These half-inch to the mile (1:126,720) maps were produced with recreation use by motorists and tourists in mind, these maps were popular and influential.

Sheet 37 - Publication date: 1903 The major part of the route is shown as a road to Levant Mine.

## **Primary Evidence:**

### **Inland Revenue Valuation Records - Finance (1908-10) Act 1910**

These maps on their own can provide very good evidence of a RoW. If a track is uncoloured on the map and lying between hereditaments, this is very good evidence that it was excluded as being a public road. Footpaths and bridleways are usually included in the hereditament (plot area) but there is a deduction for them in the valuation.

IR 128/5/791 and 792 - All of the route is shown clearly excluded from adjoining hereditaments which is very good evidence that the path was considered a public road. It should be noted that the 'dog leg' start of the route was seemingly established after the first version of the 25inch map. The very start is unfenced but yet it is excluded from the hereditaments. This is very good evidence of public use of the route.

### **Tithe Records**

The tithe maps and apportionments are an important source of information about the history and topography of a parish. They provide details of land ownership and occupation, and the type of cultivation of the land. They were produced in order to assess the tithe payable in cash to the parish church for the support of the church and its clergy. Roads were specifically excluded from tithe payments and thus can provide valuable evidence for the existence of Rights of Way. The tithe apportionment often describes public tracks as "Common, wastes and roads" or sometimes "Roads and rivers", which are all areas which generated no tithes for the church. Often such areas excluded from tithe are shaded in a sienna coloured wash. Tithe records can provide reputable evidence on their own taken in support of other standards of public records.

St Just Tithe - The road to Levant Mine Path is shown in the same unnumbered plot as adjacent county roads and not listed in apportionments.- no tithe payable.

The start of the path runs along the edge of what was plot 1218 "Engine House Croft" and along edge of plot 1214 "Lane Croft".

### **Parish Area Books**

St Just - Plot 461 is listed as 'Road'

## **Other Evidence:**

### **Definitive Map Records**

Users of public footpath 126 would not turn back and retrace their steps when they reached the lane but continued along the lane to the cliff. Described in the survey schedule for footpath 126 as "Lane leading from Higher Levant Mine to top of cliff".

The definitive statement for FP126 says "FP from Levant Road to lane leading to coast".

The lack of recording of the lane on the definitive map is an indication that it was a public road and therefore could not be recorded on the map.

### **Further Evidence**

July 2017 no registered owner of track, most adjoining land registered

### **Land Ownership**

Exclusion of a path from land registrations on either side is very indicative of public rights. However where an adjacent registration includes a path this does not give any indication against public rights. Land registrations sometimes deliberately or inadvertently extend ownership beyond that shown on the original deeds.

The Land Registry shows path is excluded from registration yet plots either side are all registered. This is strongly suggestive of an ancient public highway.

## **Summary and Statement of Reasons:**

The Inland Revenue map shows the whole of the route of the application excluded from the adjacent hereditaments including the starting 'dog leg' and across the coastal down. We submit that it was excluded because the whole of the route was a public road.

The early OS 25 inch map shows the majority of the route a Road in a separate plot indicating the significance of the route. The plot number, 461, is listed in the Area Book as 'Road'. The later version shows all the route as a road.

The Tithe map shows the main part of the route as an un-numbered road similar to and contiguous with other county roads.

The Land Registry shows the path is excluded from registration. This is strongly suggestive of an ancient public highway.

The combination of the evidence from Old Maps, Inland Revenue map 1910, Tithe and Area Book gives exceptionally strong indication that the path is highway and now should be recorded with Restricted Byway Status.

In order to be able to modify the definitive map and statement, the Surveying Authority needs to have a discovery of evidence which shows, on the balance of probabilities, that highway rights exist. While no single piece of evidence is necessarily conclusive, the applicant believes that taken as a whole the evidence demonstrates highway reputation.



## APPENDIX I - Documents and Photos

### OS One Inch Ordnance Survey Maps - One-inch England and Wales, 1809 to 1913

Road to Levant Mine is clearly shown

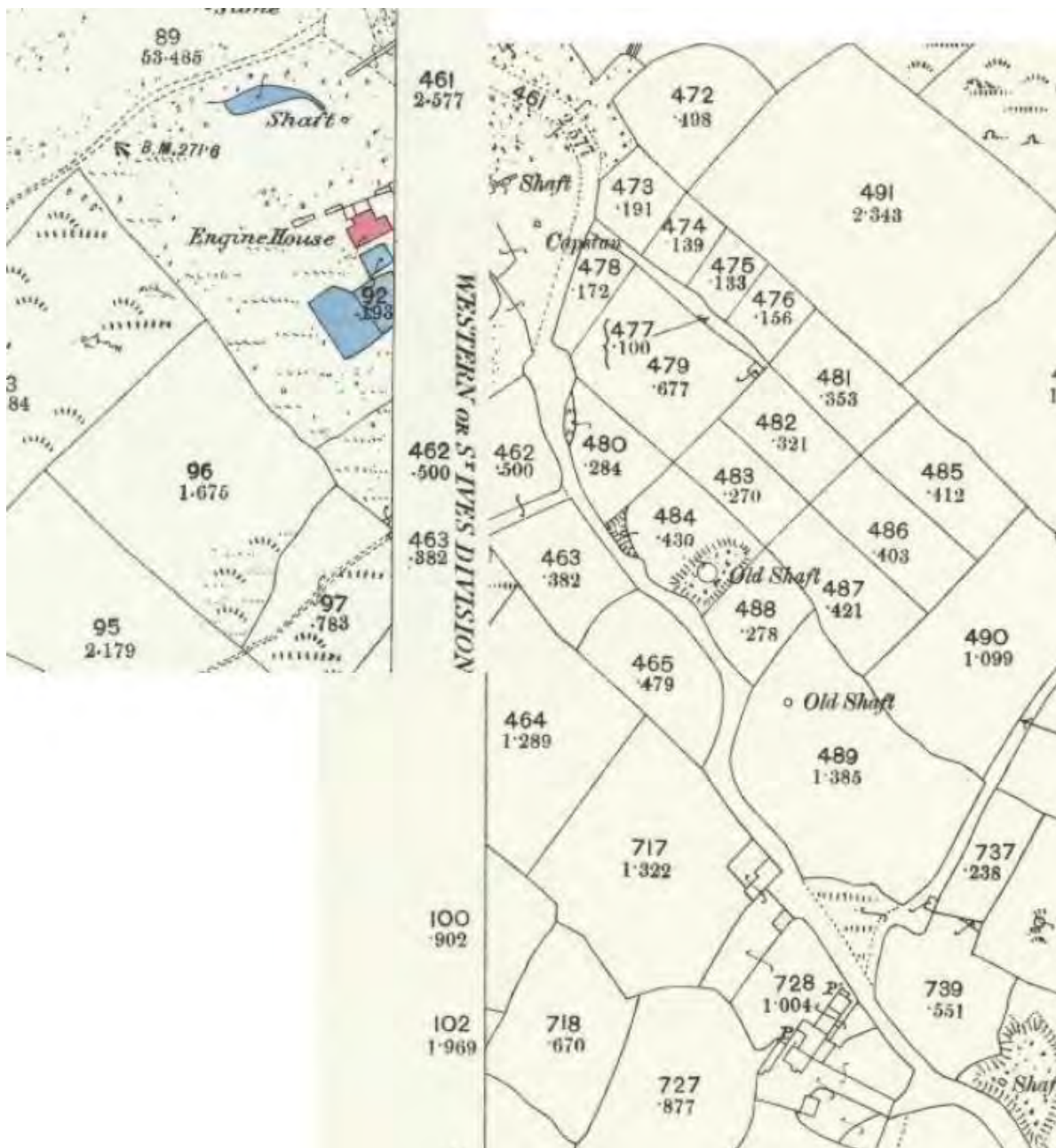




## Ordnance Survey Maps - 25 inch England and Wales, 1841-1952

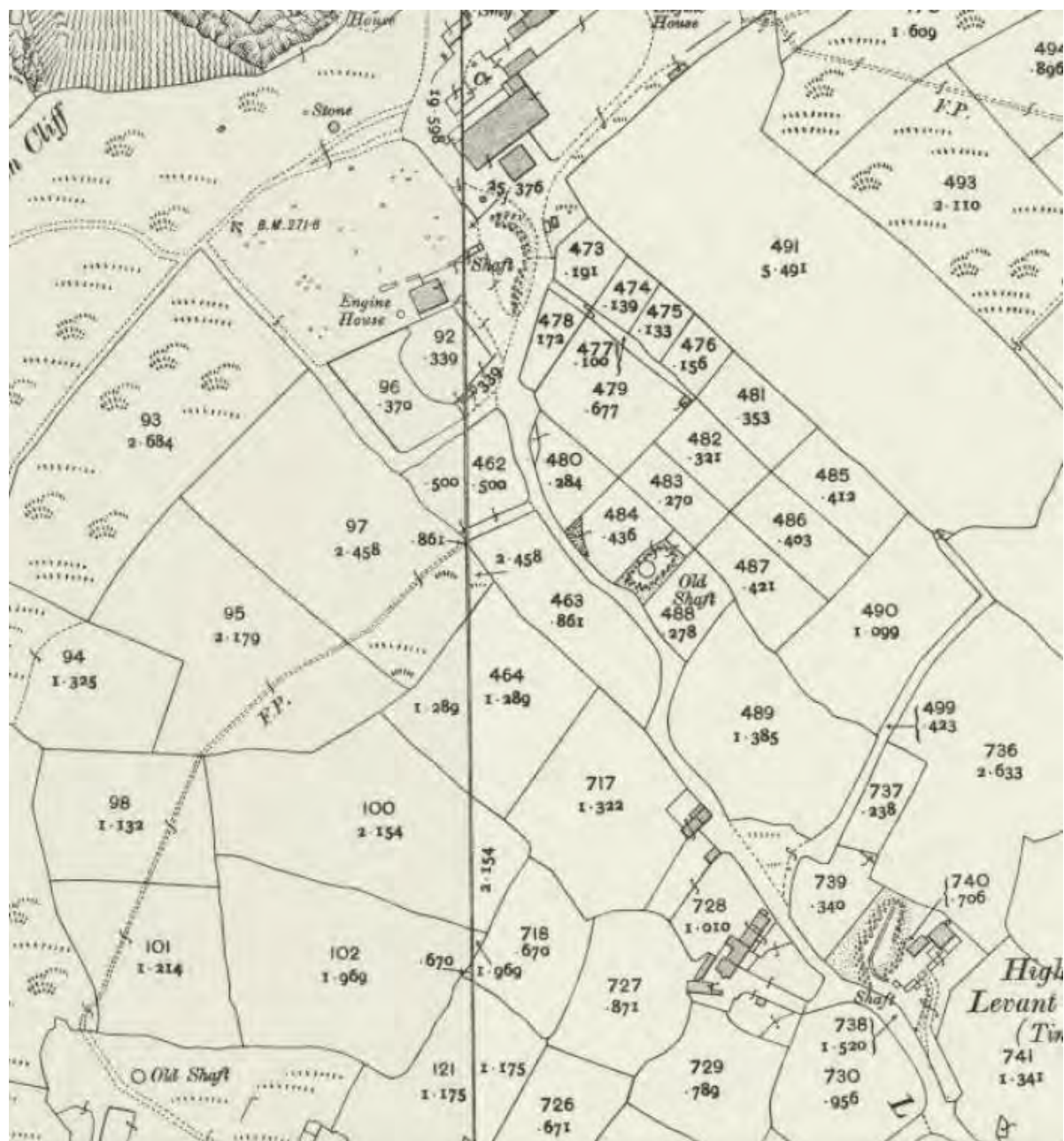
1878 Edition

The very start on western most sheet is not shown



1908 Edition

All of route is shown as a road, start is unfenced..





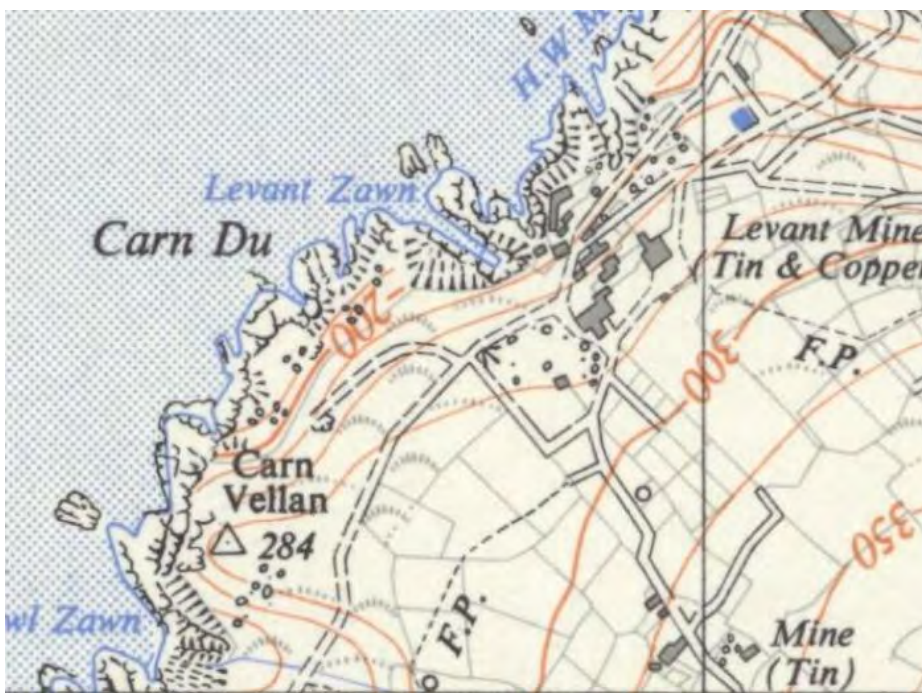
## OS Six Inch Ordnance Survey Maps - Six-inch England and Wales, 1888 to 1913

All the route is shown as road



## Ordnance Survey, 1:25,000 maps of Great Britain - 1937-1961

All the route is shown as a road



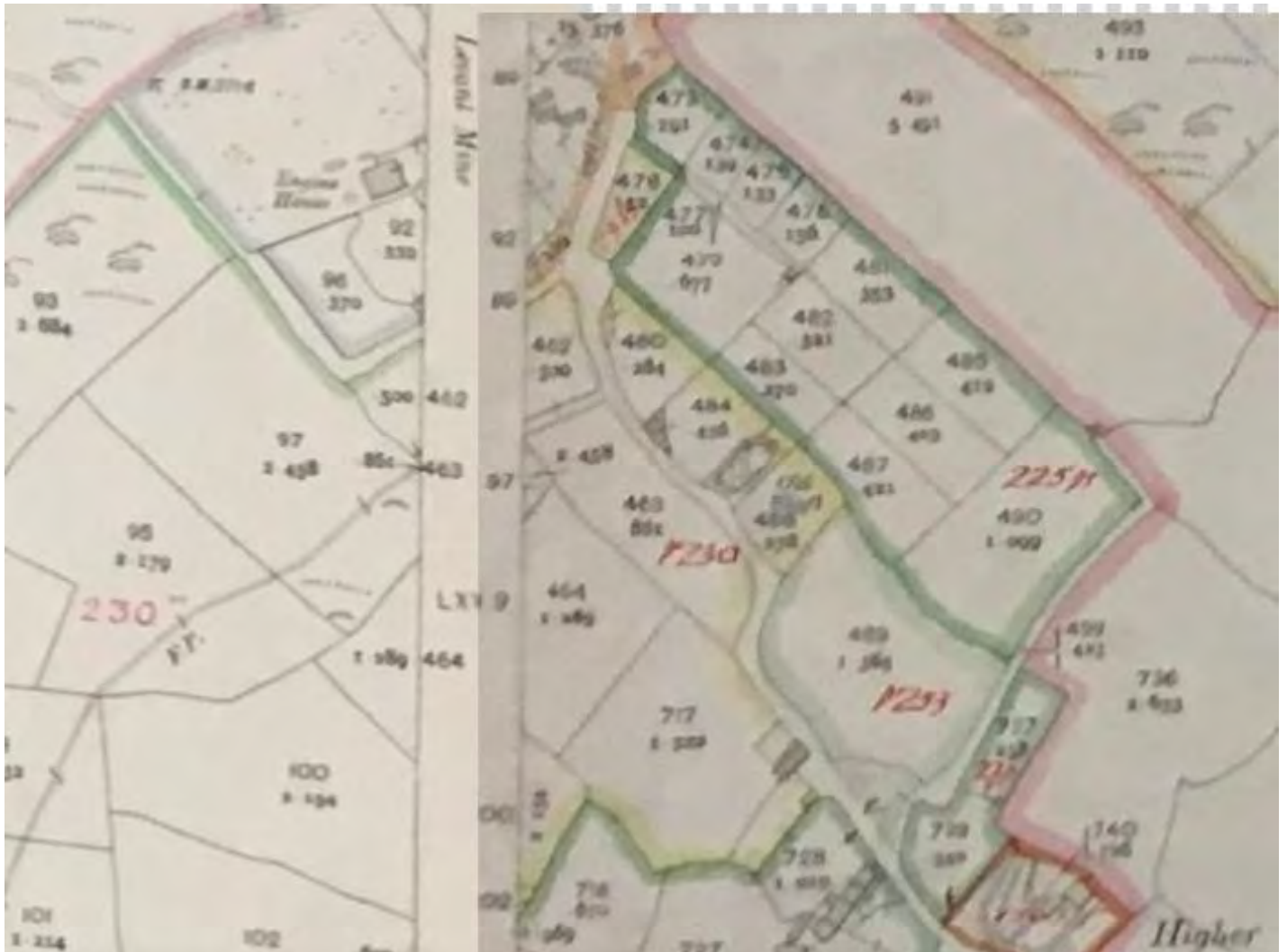
## Bartholomew's Half Inch to the Mile Maps of England and Wales, 1919-1924

Road through to Levant Mine is clearly shown



## Inland Revenue Valuation Records - Finance (1908-10) Act 1910

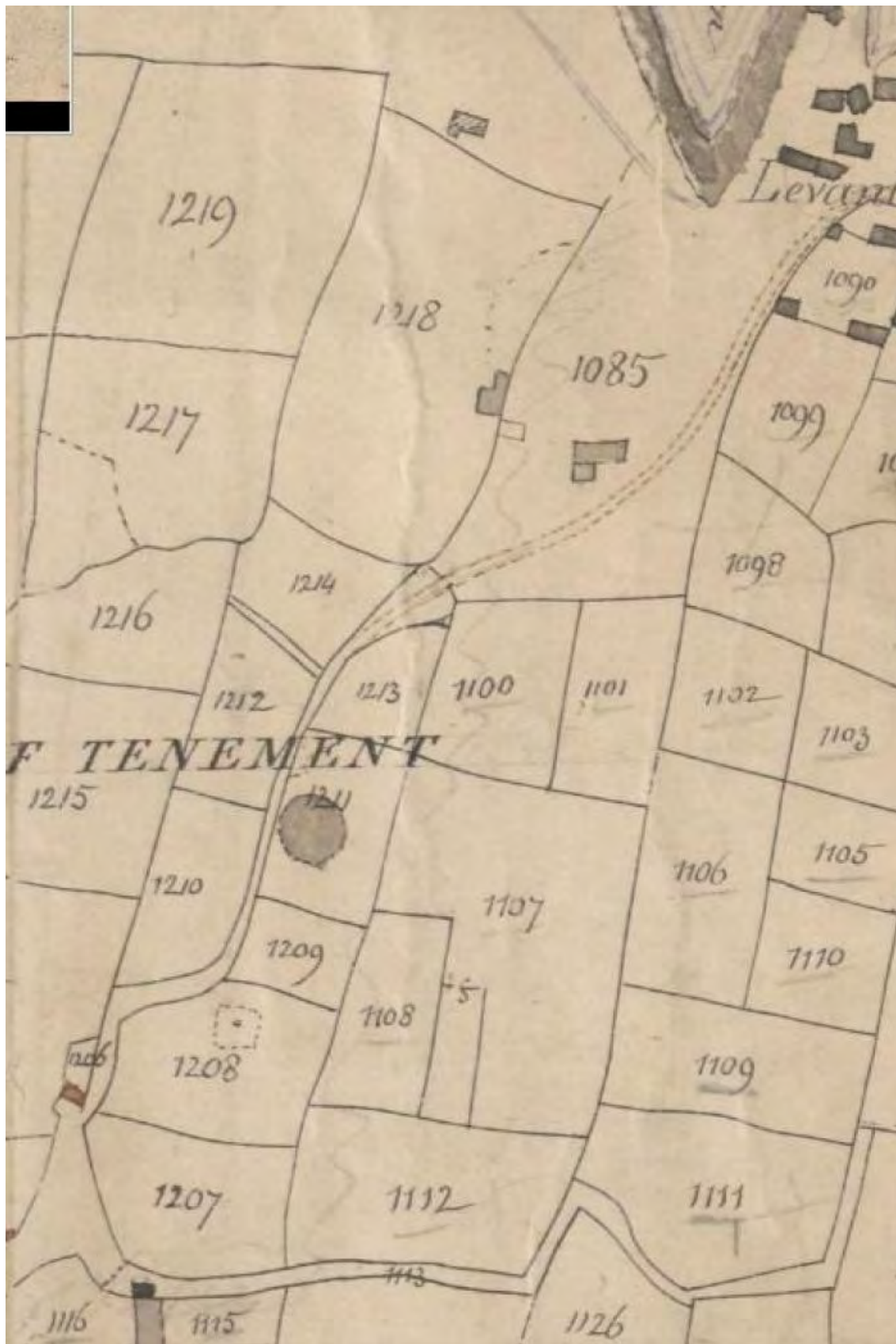
All of route is excluded from hereditaments.





## Tithe Records

All except the very first part is shown unnumbered and the Levant Road part is contiguous with county roads. Route starts through plot 1218 and 1214.



## Apportionments listing 1214 and 1218

1209	Higher Meadow, .....	Arable, .....	38	5	5
1210	Corner Meadow, .....	do. ....	1 34	1 0	1 0
1211	Whim Meadow, .....	do. ....	1 36	4	4
1212	Lower Meadow, .....	do. ....	1 24	11	9
1213	The Three Corners, .....	Pasture, ....	1 25	9	9
1214	Lane Croft, .....	.....	1 29	3	
1218	The Engine House Croft, ....	Coarse Pasture, ..	2 3 15	9	
			5 1 1	50 4 5	60 3 3

## Parish Area Books

Plot 461 'Road'

No. on Plan.	Area in Acres.	Remarks.	No. on Plan.	Area in Acres.	Remarks.
458	1.401	Arable.	507	.523	Pasture.
459	.170	Ponds.	508	.522	Arable.
460	.660	Houses and yards.	509	.420	Arable.
461	2.577	Road.	510	.391	Arable, rough pas- ture, &c.
462	.500	Arable, &c.	511	.756	Rough pasture, furze, &c.
463	.382	Arable.	512	.403	Arable, &c.
464	1.289	Pasture.	513	.416	Arable, &c.
465	.479	Pasture.			
466	.162	Pond.			



# Definitive Map Records

Draft provisional map survey schedule path 126

**CORNWALL COUNTY COUNCIL**  
**NATIONAL PARKS AND ACCESS TO THE COUNTRYSIDE ACT, 1949: PART IV.**  
**Survey of Public Rights of Way**  
**Schedule to accompany Map No 33/35/1**

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Parish of St. Aust. U.D. Council St. Aust. U.D.

Reference Number St. Aust. U.D.

Serial Number of Path as shown on Map.	Type of path, e.g. footpath, bridleway, or Road used as public path.	Name of Path (if any).	Starting Point of path.	Ultimate destination of path.
126.	Footpath		Higher Levant Mine	Lane leading from Higher Levant Mine to Cliff Top.

Concise information to be given here about features occurring on the path, including the nature of obstructions, the full wording of notices posted or direction posts, the nature of damage or of repairs required, particulars of the sides and gates and any symbols shown on the Map which require further explanation.

Footpath starts from Higher Levant Mine, on roughly metalled road passing Sparrow Moor Mine, (path becomes narrower and unmetalled), crossing two fields (linked by daps) path enters unmetalled lane (by field gate) and ends at lane leading from Higher Levant Mine - to top of Cliff.

Concise information to be given here as to the average width and general condition of the path (particularly whether it is metalled or ploughed).

Path through two fields subject to being ploughed.

Reasons to be given here for believing the path to be public, e.g. "Awarded," "Repaired at Public Expense (with date)," or "Uninterrupted use by public for years," as the case may be, together with particulars of any documentary evidence available.

Uninterrupted use of path by public throughout living memory.

Survey carried out between 26th June, 1951. and by J. Taverner.

Date 7th July, 1951. Clerk W. H. T. Byles.

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from Cornwall Record Office

## Draft provisional definitive map

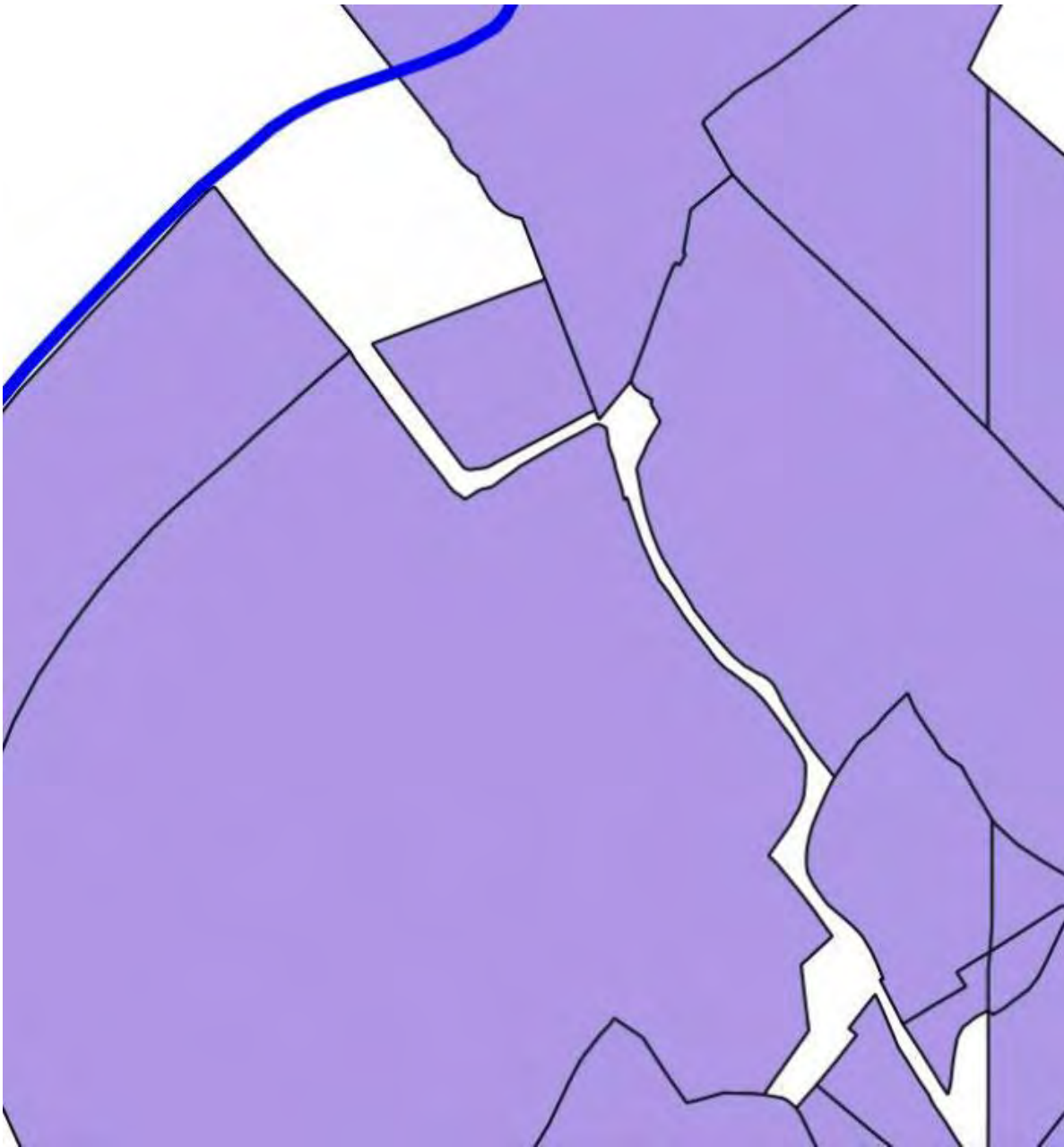


Definitive statement FP126 connects to 'Lane'

- |     |  |
|-----|--|
| 124 | FP from Roscommon Cliff to FP 126  |
| 125 | BW from Levant Mine to the northern end of FP 114 at a point north of the former Botallack Mine (part of BW 196) |
| 126 | FP from Levant Road to lane leading to coast   |
| 127 | FP from Nineveh, across fields via Carnyorth Moor, Botallack   |
| 128 | FP from Carnyorth, via FP 129 and continues over fields to FP 127 2'6"   |

## Land Ownership

Land Registry Polygons - registered in purple.



## Land Registry 'Inspire' Map



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Cornwall Council / Records Office